

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.86.2803, 37.86.2904, 37.86.2907,	)	
37.86.2912, 37.86.2914, 37.86.2916,	)	
37.86.2918, 37.86.3007, 37.86.3020,	)	
and 37.86.3105 pertaining to Medicaid	)	
reimbursement for inpatient and	)	
outpatient hospital services	)	
	)	

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-391 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 2024 of the 2006 Montana Administrative Register, issue number 16.

2. The department has amended ARM 37.86.2803, 37.86.2904, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.3007, 37.86.3020, and 37.86.3105 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: Outliers are intended to acknowledge the extraordinary expenses incurred during catastrophic care hospital stays. Additional reimbursement is in no way intended, nor does it cover the cost of this care. It seems punitive to reduce payments to the small number of Montana hospitals who are able to provide this level of care. The department should not alter the outlier payment methodology to save money.

RESPONSE: The department has not altered the outlier payment methodology. Prior to 2002, the department traditionally had a goal of 7% for outlier payments. In August 2002, catastrophic case payments were eliminated. The goal for cost outlier payments was increased to 10% to compensate. Currently, cost outlier thresholds are set for each Diagnosis Related Group (DRG) so that outlier payments will not exceed an average of 10% of the payments. The cost outlier amounts paid have been creeping up to over 18%. The department has been over-reimbursing outlier payments. Medicare aims for a range between 5% and 8%. Medicaid has a target of 10% to add an extra measure of protection.

COMMENT #2: A task team should be authorized to investigate what mechanisms could be designed for those patients who have catastrophic care needs and are in a payor gap of extended inpatient stays while awaiting disability determination or

Medicaid eligibility.

RESPONSE: The department recognizes that this type of patient has needs that are difficult to meet for hospitals, Medicare, Medicaid, and all payors. The department's new RN Hospital Case Manager position will be working with hospital case managers to assure appropriate placement of patients. The department has limited ability to do this until the patient actually becomes Medicaid eligible unless we are authorized to do so by the client. We are willing to work with hospitals who obtain the necessary authorizations. The department is also agreeable to convene a group of interested providers and department personnel to explore further solutions.

COMMENT #3: We support the proposed changes to the rules to coordinate Medicare and Medicaid cost reports and maintenance.

RESPONSE: The department appreciates the support.

COMMENT #4: We do not oppose the routine update and maintenance of the DRG system. However, this is not a budget neutral adjustment. Please specify the amount appropriated for inpatient and outpatient hospital services for fiscal years 2005, 2006, and 2007 and identify any internal allocations or other adjustments that create an internal spending target.

RESPONSE: Out of the Health Resources Division line item appropriation, the department allocated \$101,200,000 in SFY 2005, \$107,468,000 in SFY 2006, and \$109,700,000 in SFY 2007 for all hospital inpatient and outpatient services not including mental health claims. Actual expenditures for SFY 2005 were \$103,934,000 and \$117,979,000 for SFY 2006. The proposed reduction in overpayment of outliers to DRG facilities of \$1.56 million will not bring the entire hospital budget back within the appropriations, but by bringing outliers back to neutral it will assist us, along with other planned changes, in our goal of not overspending our allocation.

COMMENT #5: The department disclosed to hospitals that hospital care exceeds the budget due to out-of-state hospital expenditure increases, increases in provider-based services and implementation of new technology to pay claims. The Montana Hospital Association (MHA) and member hospitals have been working with the department over the past several months to identify areas of spending concern and services with the potential to reduce cost growth spending.

RESPONSE: The department thanks MHA and the member hospitals for the efforts they have made to help the department identify issues and solutions. Out-of-state expenditures, provider-based services, and new technology in claim payment were only some of the issues identified by the department. The increased percentage of outlier payments from an original goal of 10% to the actual payment of 18% is also an issue that needed to be addressed. The department has taken conversations and information on the other issues identified into consideration and is addressing out-of-state reimbursement and other issues in upcoming rule changes.

COMMENT #6: We are concerned about the department's action to reduce outlier payments from 18% of payments to 10% of payments. Outlier funds are created by reducing the base payment amount paid for all DRG cases. We recommend that the department increase the base price amount and reduce the outlier payment to not change the current payment amounts. In addition, the department made other reductions in recent years to eliminate payments for catastrophic cases, stating that those cases were funded from money set aside from the base price but are now gone. The base price has shrunk making it appear that more cases have higher than normal charges.

RESPONSE: There is not a separate fund for outlier payments created by base price. Outliers are a percentage of hospital payments based on charges submitted by the hospitals to the department. The base price has not shrunk. However, the department acknowledges that the percentage of costs paid through the hospital payment system has decreased. This is somewhat mitigated by additional payments made as a result of the hospital utilization fee. The department raised the base price from \$1980 to \$2037 in January 2006, to \$2118 in July 2006, and is leaving it at \$2118 in October 2006.

The previous outlier payments of 18% to facilities were an overpayment by the department not in keeping with our goal of 10%. There are more cases with higher charges. Based on 2005 data because of increased charges by hospitals, the payment amount for outliers has increased to 18%. As noted in response to comment #4 above, the department overspent its allocation for hospitals in SFY 2005. In order to meet budget goals, the department cannot sustain an 8% increase in payments from the expenditure goals. The department has drafted a proposed rule change to out-of-state hospital reimbursement for January 1, 2007 that will add additional savings to the anticipated over-expenditure of the budget.

The department has never had reserve funding for catastrophic cases. Prior to 1997, the department had a separate cap on spending for catastrophic cases, but did not have a separate pool of funding for these cases.

COMMENT #7: The department is creating a considerable disincentive for hospitals to accept patients with special treatment needs that cannot be discharged to lower care settings. The department needs to address the problem of high cost patients by better case management and placing patients in the correct treatment setting.

RESPONSE: The department has hired an RN Hospital Case Manager for the hospital program to address these issues.

COMMENT #8: A commentor states Medicaid costs covered by DRG payments has eroded from full costs paid in the 1980s to about 72% of costs this year.

RESPONSE: The department acknowledges that DRG payments cover only 72% of costs. Through the enactment of the hospital utilization fee in 2004, hospitals

receive in aggregate the full cost of treating Medicaid clients.

/s/ John Koch for  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 30, 2006.